

(6) Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are:

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the PHA, including common or site areas that were not a part of the project. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but will nonetheless be corrected upon notice to HUD.

(ii) *Unit count error.* A unit count error occurs if the total number of public housing units considered in scoring is incorrect. Since scoring uses total public housing units, HUD will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *Nonexistent deficiency error.* A nonexistent deficiency error occurs if the inspection cites a deficiency that does not exist.

(7) HUD's decision on a request for technical review is final and may not be further appealed under the administrative process in § 902.69.

#### **§ 902.69 PHA right of petition and appeal.**

(a) *Appeal of troubled performer designation and petition for removal of troubled performer designation.* A PHA may take any of the following actions:

(1) Appeal its troubled performer designation (including Capital Fund program troubled performer designation);

(2) Appeal its final overall PHAS score;

(3) Petition for removal of troubled performer designation;

(4) Appeal any refusal of a petition to remove troubled performer designation; and

(5) Appeal actions under § 902.66.

(b) *Appeal of PHAS score.* (1) If a PHA believes that an objectively verifiable and material error(s) exists in any of the scores for its PHAS indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (i.e., as troubled performer, substandard performer, standard performer, or high performer), the PHA may appeal its PHAS score in

accordance with the procedures of paragraphs (c), (d), and (e) of this section. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (i.e., from troubled performer to substandard performer or standard performer, or from standard performer to high performer).

(2) A PHA may not appeal its PHAS score, physical condition score, or both, based on the subsequent correction of deficiencies identified as a result of a project's physical inspection or the denial of a technical review request.

(3) A PHA may not appeal its PHAS score, Capital Fund program score, or both, based on the fact that it did not submit its Capital Fund program information to eLOCCS by the submission due date.

(c) *Appeal and petition procedures.* (1) To appeal a troubled performer designation or a final overall PHAS score, a PHA must submit a request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days following the issuance of the overall PHAS score to the PHA. To petition the removal of a troubled performer designation, a PHA must submit its request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center.

(2) To appeal the denial of a petition to remove a troubled performer designation, a PHA must submit a written request to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days after HUD's decision to refuse to remove the PHA's troubled performer designation.

(3) To appeal the petition for the removal of a troubled performer designation, or appeal the denial of a petition to remove a troubled performer designation, a PHA shall submit its request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center.

(4) An appeal of a troubled performer designation, the petition for removal of a troubled performer designation, or the appeal of a refusal of a petition to

remove a troubled performer designation must include the PHA's supporting documentation and reasons for the appeal or petition. An appeal of a PHAS score must be accompanied by the PHA's evidence that a material error occurred. An appeal or petition submitted to HUD without supporting documentation will not be considered and will be returned to the PHA.

(d) *Denial, withholding, or rescission.* A PHA that disagrees with the basis for denial, withholding, or rescission of its designation under § 902.66 may make a written request for reinstatement within 30 days of notification by HUD of the denial or rescission of the designation to the Assistant Secretary, and the request shall include reasons for the reinstatement.

(e) *Consideration of petitions and appeals.* (1) Consideration of a petition or the appeal of a final overall PHAS score, of a troubled performer designation, or of a petition to remove troubled performer designation. Upon receipt of such an appeal or a petition from a PHA, HUD will evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. HUD will review the PHA's file and the evidence submitted by the PHA to determine whether an error occurred.

(2) Consideration of an appeal of refusal to remove a troubled performer designation. Upon receipt of an appeal of refusal to remove a troubled performer designation, HUD will evaluate the appeal and its merits for the purposes of determining whether a reassessment of the PHA is warranted. The HUD staff initially evaluating an appeal of refusal to remove a troubled performer designation will not be the same HUD staff who evaluated the PHA's petition to remove the troubled performer designation. The Assistant Secretary will render the final determination of such an appeal.

(f) *Notice and finality of decisions.* (1) If HUD determines that one or more objectively verifiable and material error has occurred, HUD will undertake a new inspection of the project, arrange for audit services, adjust the PHA's score, or perform other reexamination of the financial, management, or Capital Fund program information, as ap-

propriate in light of the nature of the error that occurred. A new score will be issued and an appropriate performance designation made by HUD. HUD's decision on appeal of a PHAS score, issuance of a troubled performer designation, or refusal to remove a troubled performer designation will be final agency action. No reconsideration will be given by HUD of such decisions.

(2) HUD will issue a written decision on all appeals and petitions made under this section.

### Subpart G—PHAS Incentives and Remedies

#### § 902.71 Incentives for high performers.

(a) *Incentives for high performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives, and such other incentives that HUD may determine appropriate and permissible under program statutes or regulations.

(1) *Relief from specific HUD requirements.* A PHA that is designated a high performer will be relieved of specific HUD requirements (*e.g.*, will receive fewer reviews and less monitoring), effective upon notification of a high performer designation.

(2) *Public recognition.* High performer PHAs and RMCs that receive a score of at least 60 percent of the points available for the physical condition, financial condition, and management operations indicators, and at least 50 percent of the points available for the Capital Fund indicator, and achieve an overall PHAS score of 90 percent or greater of the total available points under PHAS shall be designated a high performer and will receive a Certificate of Commendation from HUD, as well as special public recognition, as provided by the field office.

(3) *Bonus points in funding competitions.* A high performer PHA may be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program and are provided in the relevant notice of funding availability.

(b) *Compliance with applicable federal laws and regulations.* Relief from any standard procedural requirement that